

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Miller Media Group)	
Petition For Rulemaking)	
To Allow The Option Of)	FCC Docket No. RM-11331
Local Programming)	
On FM Translator Stations)	

**WRITTEN COMMENTS OF DON SCHELLHARDT, ESQUIRE KI4PMG
AND NICKOLAUS E. LEGGETT N3NL**

We are 2 of the 3 signatories of the Petition For Rulemaking which triggered the Federal Communications Commission's first deliberations, in FCC Docket RM-9208, on establishing a Low Power FM (LPFM) Radio Service. We were joined on this Petition by Nick Leggett's wife, Judith Fielder Leggett of Virginia.

The Commission opened parallel proceedings on the same subject in FCC Docket RM-9242, acting in response to a different Petition For Rulemaking by J. Rodger Skinner of Florida. However, as the chronology of the Docket numbers will attest, the Schellhardt/Leggett Petition was filed first -- several months before the Skinner Petition.

The undersigned commenters are also 2 of the 5 signatories of the Petition For Rulemaking which triggered the Federal Communications Commission's first deliberations, in FCC Docket RM-11287, on establishing a Low Power AM (LPAM) Radio Service. We were joined on this Petition by THE AMHERST ALLIANCE of Michigan (which was co-founded, and later led, by Don Schellhardt), THE MICHIGAN MUSIC IS WORLD CLASS!

CAMPAIGN and THE LPAM NETWORK of New York. Our Petition followed an earlier Petition that was filed by Fred Baumgartner, C.P.B.E., then of Colorado and now of California. However, our Petition for an LPAM Radio Service was the first one to be Docketed for the solicitation of public comments.

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Given the roles we have played, both individually and jointly, in the advancement of both LPFM and LPAM, we can offer a unique perspective on the RM-11331 Petition.

The RM-11331 Proposal Could Provide A Net Increase In Broadcast Localism

Subject to 3 important caveats, both of us support the RM-11331 Petition.

So long as these caveats are honored, the RM-11331 proposal, filed by Miller Media Group, appears to have no “downside” for advocates of locally focused broadcasting. If none of the existing translators take advantage of the proposed policy change, the worst that will happen is a continuation of the status quo. On The Other Hand, if one or more existing translators begin to air locally originated programming, this is a net subtraction from the strictly out-of-town broadcasting that would otherwise result.

Further, if this policy change is adopted, there may also be opportunities for aspiring Low Power Radio broadcasters to buy translator stations and “convert” them.

A major barrier to market entry would be lowered -- because, at least right now, translators can generally be purchased at a much lower price than auctioned commercial stations or full power non-commercial stations.

Caveat #1: Retention of the Proposed 25-Mile Limit

Our endorsement of the RM-11331 Petition is premised upon retention of the proposed definition of what constitutes “local programming”. Miller Media Group, in Footnote 1 on page 1 of its Petition For Rulemaking, proposes that programming should be considered “local” only if it originates within 25 miles of the studio from which the programming is initially broadcast.

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25 miles is a reasonable standard for defining what constitutes “local programming”. Without a “litmus test” set at 25 miles, or some comparable distance, the definition of “local” could easily become elastic and subject to extreme abuse.

Therefore, we urge the FCC to embody the 25-mile limit, prominently, in any proposed rule that would implement the Miller Media Group proposal in this Docket.

Caveat #2: No Erosion of Low Power FM

Obviously, the proposal in Docket RM-11331 can produce a net increase in broadcast localism only if the “locally programmed translators” operate in addition to -- rather than at the expense of -- Low Power FM stations.

As the first line of defense: Locally programmed translators should never be allowed to displace an existing Low Power FM station. Period.

The two of us can envision, at present, only two other situations in which locally programmed translators might impede Low Power FM stations:

When a new translator applicant is competing with a new LPFM applicant for an open frequency;

And/or

When and if the Commission has agreed to give new LPFM stations the ability to displace existing translators.

In such cases, the LPFM station should automatically prevail -- since an LPFM station is required to broadcast a certain amount of local programming, whereas a translator would have no obligation to carry any local programming at all. Under the Miller Media Group proposal, in Docket RM-11331, local programming would be an option for the translator and nothing more.

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If a locally programmed translator wants parity with an LPFM station in these situations, it should be required first to obligate itself to become permanently subject to the same local programming requirements that are binding upon an LPFM station.

Even then, the locally programmed translator should only gain an equal standing with LPFM stations. Under no circumstances should a new or existing translator be able to displace an established LPFM station or given automatic priority over a new one.

**Caveat #3: No Use of Local Programming, No Matter How Extensive,
Should Excuse Translators From Accountability**

Some commenters in this Docket seem to fear that allowing translators to carry local programming (within the 25-mile limit) would somehow exempt from accountability those translators which were granted licenses improperly, and/or were moved ahead of LPFM stations in “the line” for licensing consideration, during the Great Translator Invasion.

We do not see any indication that the RM-11331 Petition intends such a result. If the FCC is able to find such an intent in the Petition, then the Commission should yank out that policy before the RM-11331 Petition is moved to the proposed rule stage.

No amount of local programming should protect a translator from accountability. If a translator license has been granted improperly, due to willful misrepresentation and/or any other unjustified reason, the license for that translator should be suspended and/or revoked. Similarly, if a translator application has been “moved ahead in line” at the expense of one or more LPFM applicants, then the licensing process should be set back to the appropriate point for that particular translator application.

We do not see how the RM-11331 Petition would prevent such corrections.

The RM-11331 Petition In Context

We believe it is important for the Commission to view the RM-11331 proposal within the context of the total range of proposals for establishing community-sized, community-focused radio stations (transmitting at 250 watts or less).

Each of the currently pending Petitions -- the RM-11331 Petition, the revised Low Power AM Petition in Docket RM-11287 and the RADIO READY TO GROW (RRTG) Petition for power-boostered Part 15 AM stations - addresses a different gap in the post-LPFM pattern of community-sized, community-focused radio.

The hundreds of 100-watt LPFM stations that the Commission has licensed since 2000 have been wonderful. We are grateful. Still, the Commission should never have closed LPFM to newcomers by awarding such a huge advantage to applicants who are long-established non-profit organizations. This policy has filtered out many new voices.

In addition, the Commission has left a gaping hole in LPFM implementation by delaying for 6 years the opening of "filing windows" for 10-watt LPFM stations. In those urban areas where the spectrum has been too congested to leave room for any 100-watt LPFM stations, the FCC's 6-year delay in action on 10-watt LPFM licenses has meant in practice that there are no LPFM stations at all.

The currently pending Petitions have surfaced, in part, to fill these gaps in LPFM implementation. The other reason they have surfaced is that LPFM alone, even if implemented more flexibly than it has been in the past, is just not big enough to meet

all of the demand for -- and all of the opportunities for -- community-sized, community-focused broadcasting.

The Chart which follows demonstrates how 5 different pieces of the puzzle -- 100-watt LPFM, 10-watt LPFM, 10-watt LPAM, power-booster Part 15 AM stations and the Petition in Docket RM-11331 -- can fit together to form a comprehensive policy.

**COMMUNITY-SIZED, COMMUNITY-FOCUSED RADIO STATIONS:
PUTTING ALL THE PIECES OF THE PUZZLE TOGETHER**

(Underlining means that additional FCC action is required)

	Are Stations Generally Viable Air In These Areas? <u>Commercials?</u>			Are Licenses Open To	May Stations
	Highly <u>Rural</u>	<u>Typical</u>	Highly <u>Urban</u>	<u>Newcomers?</u>	
“Local Programming” Translator: 250W [5/06 Miller Media Proposal, Docket RM-11331]	<u>YES</u>	<u>YES</u>	No	<u>YES</u>	<u>YES</u>
Low Power FM (LPFM): 100W [Authorized in 2000 and now operating]	Maybe	YES	No	No	No
LPFM: 10W [Authorized in 2000, but not yet implemented]	No	<u>YES</u>	<u>YES</u>	No	No
Low Power AM [LPAM]: 10W [5/06 Revision of Amherst Et Al. Proposal, Docket					

RM-11287] No YES YES YES YES

Part 15 AM:

Power Boosted

[11/05 Radio

Ready To Grow

Proposal, not yet

Docketed]

No

Maybe

YES

YES

YES

6/2/06

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Conclusion

For the reasons we have stated, we urge the Commission to adopt all of the recommendations we have presented.

Respectfully submitted,

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Dated: _____

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